JD(SF)–04-06
Pasadena, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO BRANCH OFFICE
DIVISION OF JUDGES

INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS

and **Case 21-CB-13923**

OTIS ELEVATOR COMPANY

INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 18

and **Case 21-CB-13925**

OTIS ELEVATOR COMPANY

Steve L. Hernandez, Esq., Los Angeles, CA,
for the General Counsel.
Johan W.E. Maitland, Esq., Burlington, VT,
for the Charging Party.
Keith R. Bolek, Esq., Washington, D.C.,
for the Respondent International Union.
J. David Sackman, Esq., Los Angeles, CA,
for the Respondent Local Union.

DECISION

Statement of the Case

Gregory Z. Meyerson, Administrative Law Judge. Pursuant to notice, I heard this case in Los Angeles, California, on October 31 and November 1, 2005. Otis Elevator Company (herein called Otis, the Employer, or the Charging Party) filed an original, a first amended, and a second amended unfair labor practice charge in Case 21-CB-13923 on April 6, May 13, and June 29, 2005, respectively. Otis also filed an original, a first amended, and a second amended unfair labor practice charge in Case 21-CB-13925 on April 6, May 13, and June 29, 2005, respectively. Based on those charges, as amended, the Regional Director for Region 21 of the National Labor Relations Board (the Board) issued a consolidated complaint on July 26, 2005. The complaint alleges that the International Union of Elevator Constructors (herein called the International Union or the Respondent International Union) and the International Union of Elevator Constructors, Local 18 (herein called the Local Union or the Respondent Local Union), and collectively referred to as the Respondents, violated Sections 8(b)(1)(A) and 8(b)(1)(B) of the National Labor Relations Act (the Act). The Respondents filed timely individual answers to the complaint denying the commission of the alleged unfair labor practices.

All parties appeared at the hearing, and I provided them with the full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally and file briefs. Based upon the record, my consideration of the briefs filed by counsel for each party, and my observation of the demeanor of the witnesses, I now make the following findings of fact and conclusions of law.[1]

Findings of Fact

I. Jurisdiction

The complaint alleges, the Respondents' answers admit, and I find that the Employer, a New Jersey corporation with headquarters in Farmington, Connecticut, and a district office in Pasadena, California, has been engaged in the manufacture, installation, and maintenance of elevators and escalators throughout the United States, including the State of California. Further, I find that during the 12-month period ending May 5, 2005, the Employer, in the course and conduct of its business operations, purchased and received at its California locations goods valued in excess of $50,000 directly from points located outside the State of California.

Accordingly, I conclude that Otis is now, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. Labor Organizations

The complaint alleges, the Respondents' answers admit, and I find that at all times material herein, the Respondent International Union and the Respondent Local Union have each been labor organizations within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

A. The Dispute

The dispute in this matter had its genesis at the Morongo Casino in Cabazon, California where the Employer was engaged in the installation of elevators and escalators. The Employer's elevator constructors are represented by the Respondents. During the course of that construction project, the Employer subcontracted with another company for the construction of a "gantry" to raise the escalators into position. However, the Respondents consider the erection of the gantry and the raising of the escalators to be work properly performed by those employees it represents under the terms of the collective-bargaining agreement with the Employer. After learning that the work of raising the escalators was actually performed in part by employees other than the elevator constructors it represents, the Respondents filed a grievance against the Employer under the terms of the collective-bargaining agreement, and filed intra-union disciplinary charges against those of its members who allegedly worked in a "composite crew" with the employees of the subcontractor in raising the escalators.

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[1] The credibility resolutions made in this decision are based on a review of the testimonial record and exhibits, with consideration given for reasonable probability and the demeanor of the witnesses. See *NLRB v. Walton Manufacturing Company,* 369 U.S. 404, 408 (1962). Where witnesses have testified in contradiction to the findings herein, I have discredited their testimony, as either being in conflict with credited documentary or testimonial evidence, or because it was inherently incredible and unworthy of belief.

Pursuant to the disciplinary process, the Respondent Local Union fined its members Scott Congrove and Scott Cutler. Following the appeals of Congrove and Cutler to the Respondent International Union, the International Union denied their appeals and increased the amount of their fines. Neither Congrove nor Cutler has further appealed their fines through the Respondents' internal disciplinary appeal process. The Employer settled the grievance filed by the Respondents by the payment of an amount of money considered to be the equivalent of the amount that would have been earned by the Employer's elevator constructors had they assembled the gantry and raised the escalators without the assistance of the subcontractor's employees.

It is the position of the General Counsel and the Charging Party that by fining Congrove, the Respondents have attempted to prevent him from performing his employment duties as directed by the Employer. The complaint alleges this conduct as restraining and coercing employees in the exercise of their Section 7 rights in violation of Section 8(b)(1)(A) of the Act. The General Counsel and the Charging Party contend that Cutler, who held the position of mechanic in charge on the Morongo project, was a supervisor, collective-bargaining representative, and grievance adjuster of the Employer, as defined by the Act. They further contend that the Respondents fined Cutler because he interpreted the collective-bargaining agreement on behalf of the Employer in a manner inconsistent with the Respondents' interpretation of the agreement. It is alleged in the complaint that this conduct restrained and coerced the Employer in the selection of its collective-bargaining representative or grievance adjuster in violation of Section 8(b)(1)(B) of the Act.

The Respondents deny that Cutler was the Employer's representative for the purpose of collective-bargaining or adjustment of grievances, and deny that they have unlawfully restrained or coerced either the Employer or employees in violation of the Act. It is the position of the Respondents that the Employer violated the collective-bargaining agreement when it subcontracted the work of assembling the gantry and raising the escalators. Further, the Respondents argue that Cutler and Congrove, who were members of the Local Union and the International Union, had aided the Employer in its breach of the contract by working in a composite crew to assemble the gantry and raise the escalators. Under the terms of the contract, this work was allegedly to be performed exclusively by elevator constructors represented by the Respondents. According to the Respondents, by their conduct, Cutler and Congrove were in violation of their oath to the Local and International Union taken at the time they became members, as well as having failed to abide by the terms of the collective-bargaining agreement. It is the position of the Respondents that their combined action in disciplining Cutler and Congrove was proper and lawful and specifically in conformity with the proviso found in Section 8(b)(1)(A) of the Act, which reads "[t]hat this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein."

At the commencement of the trial in this matter, each of the Respondents filed a series of written motions seeking a dismissal of the unfair labor practice charges, or, in the alternative, a deferral of those charges. The Respondent International Union filed four such motions captioned as follows: Motion (1) To Dismiss for Failure to State a Claim; (2) To Dismiss for Bar of the Statute of Limitations; (3) For Deferral to Pending Internal Union Discipline Proceedings; and (4) For Post-Arbitration Deferral to Grievance Resolution. (Res. Exh. 1) The Respondent Local Union also filed four similar motions essentially entitled as follows: Motion (1) To Dismiss for Failure to State a Claim of an Unfair Labor Practice Under Section of 8(b)(1)(A) of the Act; (2) To Dismiss for Failure to State a Claim of an Unfair Labor Practice Under Section 8(b)(1)(B) of the Act; (3) For Deferral to Pending Internal Union Discipline Proceedings; and (4) For Post-Arbitration Deferral to Grievance Resolution. (Res. Exh. 2)

Counsel for the General Counsel and counsel for the Charging Party responded orally to the Respondents' motions, opposing each and every one. Upon reflection, I reserved ruling on the Respondents' motions until such time as I issue my decision in this case. The General Counsel and the Charging Party were advised to address the Respondents' motions in their respective post-hearing briefs, with the Respondents' given leave to supplement their arguments in their post-hearing briefs. Accordingly, later in this decision I will rule on the Respondents' motions.

B. The Facts

For the most part, the underlying facts in this case are not in dispute. There was little conflict in the testimony of the various witnesses. Further, at the commencement of the hearing, the parties entered into a lengthy written "Stipulation of Facts," which stipulation[2] was admitted into evidence as a joint exhibit (Jt. Exh. 32) along with a series of attachments, also admitted as joint exhibits (Jt. Exh. 1-31).

As reflected in the stipulation, since at least July 9, 2002, the Respondent International Union, for and on behalf of its local unions, including the Respondent Local Union, has been recognized by the Employer as the exclusive collective-bargaining representative of its elevator constructors. This recognition has been embodied in a collective-bargaining agreement, which by its terms is effective from July 9, 2002, through July 8, 2007. (Jt. Exh. 1) Throughout the hearing, the parties referred to this contract as the "standard agreement."[3]

The Employer is a nation-wide company engaged in the manufacture, installation, repair, modernization, maintenance, and servicing of elevators and escalators throughout the United States. From about November 2003, through October 2004, Otis installed 18 elevators and two escalators at the Morongo Casino Hotel, located in Cabazon, California, (the project).

Jeffrey Gibas is employed by Otis as a construction and modernization superintendent. At the time of the events in question, he was the person responsible for job site management of all the Employer's projects in the Los Angeles basin, approximately 20 to 30, including the Morongo project. Gibas testified that the person who ran the Morongo project on a day to day basis was Scott Cutler, the mechanic in charge. Gibas was Cutler's immediate supervisor.

According to Gibas' testimony, during the construction on the project, he was informed by Cutler that the project general contractor, Perini Construction, had indicated that the escalator hoisting could not be accomplished by using the steel from the floor above. Frequently on a construction project, an escalator is hoisted into place by using the building floor steel from the floor above to hold the weight as the escalator is raised. However, in this instance, Perini informed Cutler that the building floor steel would not hold the weight of the two escalators that Otis needed to raise. Gibas and Cutler discussed the problem, and Gibas

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[2] Due to inadvertence, the official transcript of this proceeding does not reflect the admission into evidence of the "Stipulation of Facts" as a separate numbered exhibit, specifically as Joint Exhibit No. 32.

[3] The standard agreement specifies that the bargaining unit recognized by the Employer includes all "Elevator Constructor Mechanics, Elevator Constructor Helpers, and Elevator Constructor Apprentices." (Jt. Exh. 1)

contacted the Employer's "tool shop" to determine whether it had a "gantry" capable of "hoisting and rigging" a 10 ton weight. Gibas estimated the two escalators to weigh approximately 16,000 to 17,000 pounds each.

A gantry is a bridge like framework, comprised of two steel legs holding up a horizontal beam. Rigging is attached to the escalator and to the beam, and the escalator is then hoisted into position, with its weight temporarily held in place by the gantry. The actual hoisting is accomplished by means of a "chain fall," which in this case Gibas testified was "a hand driven pull chain."

Gibas testified that the Employer's tool shop did not have a gantry that could support the weight of the escalators that were going into the Morongo project. Apparently smaller gantries were available, but none capable of handling the weight required. Upon further inquiry, Gibas was directed to a hoisting and rigging company, Halbert Brothers. He contacted this company, determined that they had the necessary equipment, and ultimately subcontracted with them to place a gantry on the project. He testified, "So I hired them to bring it down. They stipulated that we pull it off the truck, get it into the building, and fork it up to the second floor. Then they would build the gantry and we'd be able to use the gantry." When asked on direct examination why the Otis employees did not build the gantry themselves, Gibas responded, "Well safety -- that's not our equipment. We didn't want the responsibility or liability to that."

It is undisputed that the gantry arrived on the project on February 5, 2004.[4] The Halbert Brothers' employees who accompanied the gantry were represented by the Ironworkers Union. It was the testimony of Scott Cutler that when the gantry arrived, the elevator constructors employed by Otis "took the forklift and we took the materials off the truck and brought it into the building, raised it up to the second level, which is the mezzanine level, put it down, and then they [the Halbert Brothers' employees] took it from there and assembled the gantry." Cutler repeatedly made it clear in his testimony, which was unchallenged by any other witness, that it was the elevator constructors employed by Otis who unloaded the gantry materials from the truck, took them up to the second floor, and placed the materials where the ironworkers could begin to assemble the gantry.

However, the Halbert Brothers' employees had provided the wrong size horizontal beam and chain fall, used to hoist the escalator into position, and so they had to replace the materials with a larger beam and chain fall. It appears that the replacement materials were not in place until the following day, February 6. In any event, Cutler testified that the ironworkers ultimately assembled the gantry, which was Halbert Brothers' equipment. Once the gantry was assembled, the elevator constructors rigged it to the first escalator and hoisted the escalator into position. The process was then repeated for the second escalator. After both escalators were in position in their respective "well ways," the ironworkers disassembled the gantry. The escalator constructors then moved the gantry materials to the ground floor and into the truck. It was Cutler's testimony that the only role the ironworkers played in the process was to assemble and disassemble the gantry. This testimony was unrebutted, and was supported by the testimony of Gibas, to the extent that he was on the project site on February 6 when the second of the two escalators was hoisted into place.

At the time of the events in question, the Employer's elevator constructor crew on the Morongo project installing the escalators was comprised of five employees, Scott Cutler, Scott Congrove, Rob Ranier, Mark Braley, and Steve Bertsch. Scott Congrove was at the time

[4] All dates hereafter are 2004, unless otherwise indicated.

classified as a "temporary mechanic."[5] Congrove's testimony also supports Cutler's assertion that only the elevator constructors employed by Otis were involved in rigging the escalators, pulling the chain, and hoisting the escalators into place. The ironworkers employed by Halbert Brothers did not participate in this effort. However, as the Otis employees were hoisting the first escalator into place, the chain pull got tangled. In order to free the chain, an ironworker employed by Halbert Brothers walked out on the top of the gantry and banged on the chain with a hammer, causing it to become untangled. While this task was performed by an ironworker, Cutler justified the effort because the chain pull was Halbert Brothers' equipment, part of the gantry materials.

Cutler's testimony emphasized that while the ironworkers were assembling and disassembling the gantry, the elevator constructors watched them work and remained "on the clock." Thus, the elevator constructors were paid for this time, and, in fact, they earned overtime on both February 5 and 6.

Cutler defends the decision not use the elevator constructors to assemble and dissemble the gantry on the basis of safety. The gantry equipment was owned by Halbert Brothers and its employees were most familiar with the equipment. It is undisputed that elevator constructors employed by Otis do regularly hoist escalators into place on various projects under the terms of the collective-bargaining agreement between the parties. However, both Cutler and Gibas testified that typically these involve loads much lighter than those being hoisted on the Morongo project. The Employer's witnesses testified that its elevator constructors had no experience with the assembly of a gantry large enough to lift such excessive weight. The entire operation was unusual, and necessitated because the general contractor would not permit the Employer to hoist using the building steel. The Employer argues that in such a circumstance, the only practical solution was to use a subcontractor experienced in hoisting very heavy loads utilizing a large gantry.

John Holzer is a business agent employed by the Respondent Local Union. Several days after the escalators were hoisted into place at the Morongo project, Holzer came out to the project on one of his periodic inspections. He testified that this was his third trip to the job site, and one of the reasons he made the trip was because he was of the impression that the escalators had been installed. Holzer testified at length about problems the Respondents have had with Otis and other contractors signatory to the standard agreement regarding the use of prefabricated sections on those escalators installed by members of the bargaining unit represented by the Respondents.

When he arrived at the project, Holzer went to the "well ways," saw that the two escalators had been hoisted into position, and noticed that the installation had been completed using certain prefabricated sections. Holzer believed these to constitute violations of the standard agreement and he sought out Cutler to complain. In the course of explaining to Cutler about the prefabrication violations, Cutler mentioned to Holzer that it had been necessary to use a subcontractor to assemble a gantry in order to hoist the escalators. Further, Holzer testified that Cutler told him that "everybody hoisted on it…everybody took a pull on the chain." Allegedly, Holzer asked Cutler specifically whether that included the ironworkers, and Cutler answered in the affirmative. According to Holzer, he informed Cutler that allowing the

[5] According to Congrove, a temporary mechanic is an elevator constructor helper who has a "permit" from the Local Union to temporarily work as an elevator constructor mechanic on a specific job site. The permit must be renewed monthly. (Also see Jt. Exh. 1, Art. X, Par. 4)

ironworkers to perform elevator constructors' work in a "composite crew" with the Otis employees was a violation of the contract. He told Cutler that, "When it comes down to rigging, it's our work and we don't give our work away."

Cutler testified that Holzer spoke with him about the alleged contract violations for using prefabricated sections on the escalators and how the violations could be remedied by removing the prefabricated sections, and then reassembling them. According to Cutler, nothing else was discussed with Holzer. In any event, as noted above, those employees present on the project at the time the escalators were hoisted and who testified, namely Cutler, Congrove, and Gibas, all testified that the ironworkers did not perform any rigging or hoisting of the escalators.

When he returned to his office, Holzer called Jeff Gibas. Holzer testified that he informed Gibas that the contract had been violated on the Morongo project by the Employer's use of prefabricated sections on the escalators.[6] Also, he told Gibas that Otis violated the contract by the use of "composite crews" to perform the work of rigging and hoisting the escalators, which was work performed under the standard agreement by elevator constructors. Holzer informed Gibas that he intended to pursue the matter, and requested that Gibas send him "time tickets" for the project so that he could determine how much work was lost by the Otis crew. Gibas testified that Holzer called him complaining about the use of a composite crew on the Morongo project, specifically the use of ironworkers to perform the work of elevator constructors. According to Gibas, he told Holzer that the work provided for under the terms of the contract had been performed by elevator constructors, and not by any other employees. The two men agreed to set up a meeting to discuss this matter further.

Gibas and Holzer met approximately one week later to discuss this matter. According to Gibas, Holzer told him that he had been to the Morongo project and had spoken with Scott Cutler. Holzer said that Cutler told him that the ironworkers had rigged and hoisted the escalators. Gibas testified that he informed Hozler that Holzer was mistaken. Gibas told Hozler that he had been on the project the day the escalators were hoisted into position, and he had not seen the ironworkers doing any such work. Gibas informed Holzer that all the ironworkers had done was to build the gantry, which was then used by the elevator constructors. However, the two men continued to disagree. Gibas provided Holzer with the time tickets that Holzer had previously requested. The meeting apparently ended with Holzer telling Gibas that the Local Union was going to file a grievance against the Employer over the incident.

A grievance was ultimately filed by Holzer. There is some confusion as to when the grievance was actually filed, with two somewhat different grievance forms being admitted into evidence. One form shows the grievance as having been filed on February 20, 2004 (Jt. Exh. 29) and the other form shows as date of filing March 22, 2004 (C.P. Exh. 1). Since no party has taken the position that the grievance was filed untimely, I fail to see the significance of the exact filing date.[7] In any event, as the grievance form with the filing date of February 20 is the more complete, containing the signed resolution of the grievance, I will assume it to be the more accurate document and accept the filing date as reflected on that document.

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[6] Holzer testified that one reason why the escalators on the Morongo project were so heavy and difficult to hoist was because they contained extensive prefabricated sections, which materials would normally be installed only after the escalators were raised into position.

[7] The Charging Party contends that it did not actually see the written grievance until June 24, 2004, when Jeff Gibas received a copy of the grievance bearing the filing date of March 22, 2004, sent from the Local Union by certified mail. (C.P. Exh. 1)

The grievance alleges a violation of the collective-bargaining agreement, specifically that the Employer's use of a "rigging outfit to setup all rigging and hoist two (2) escalators in the well ways at the Morongo Casino Hotel" deprived the elevator constructors of the work they were entitled to perform under the terms of the contract. The remedy sought by the Respondent Local Union was the payment into the Local Union's "Relief Fund" of an amount of money equal to the amount of wages allegedly lost by the elevator constructors not performing the work of rigging and hoisting the escalators.[8]

Jeffrey Ricapito is the Employer's senior labor relations manager. He testified that after the Employer received a copy of the Local Union's written grievance, he arranged a meeting to try and resolve the matter. According to Ricapito, he met at the Local Union's office with Holzer, Larry Sakamoto, a regional director of the International Union, and Ernie Brown, a vice-president of the International Union and a member of its executive board. However, the parties continued to disagree and there was no resolution of the grievance at this meeting.

Ricapito testified that the Employer ultimately decided to "resolve" the grievance, even though it did not believe that any violation of the contract had occurred. According to Ricapito, the Employer does not perform much escalator work, and the issue in dispute was not worth the effort to arbitrate. It appears from the grievance form that the resolution of the dispute consisted of the Employer agreeing to pay the monies the Local Union contended were lost to the elevator constructors when ironworkers allegedly performed the rigging and hoisting of the two escalators at the Morongo project. The grievance form indicates that the matter was resolved on March 29, 2005, by Elizabeth Ceriello, who is the Employer's labor relations manager, and Lawrence Sakamoto. (Jt. Exh. 29)

It was Ricapito's contention that the Employer did not intend for the resolution of this dispute to have any precedential value. He testified that had the parties intention been to do so, that the resolution would not have merely been set forth on the grievance form, but, rather, on a separate settlement agreement. On the other hand, Sakamoto, who signed off on the resolution on behalf of the Respondents, testified that it was not unusual for Otis to resolve a dispute with a notation on the grievance form itself, without a separate settlement document, and the resolution to still have precedential value. According to Sakamoto, where the Employer did not intend for this to be so, the Employer normally inserted either "non-admission language" or "non-precedent language" into a separate settlement document or onto the grievance form itself. He noted that such was not done in this case. Sakamoto and Ceriello had apparently not met personally to resolve this matter, but had conferred and come to their resolution over the telephone.

John Holzer filed intra-union charges against each of the five elevator constructors employed by Otis at the Morongo project on February 5 and 6, who comprised the crew installing the escalators. At the time of the events in question, each man was a member of the Respondent Local Union.[9] The charges against Cutler and Congrove are each dated March 5, and allege two "punishable offences" under Article 18, Section 1, of the Respondent

[8] Of course, as testified by Scott Cutler, the elevator constructors lost no wages on either February 5 or 6, as they remained "on the clock" as the ironworkers assembled and later disassembled the gantry.

[9] As the unfair labor practices alleged in the complaint name only Cutler and Congrove, no effort will be made to detail the chronology of those intra-union charges brought against the other three members of the crew. It is sufficient to note that the other three crew members were found guilty of the charges, fined by the Local Union, and did not thereafter appeal those fines.

International's Constitution and By-Laws. Specifically enumerated are parts (4) and (6) of the section, which relate respectively to a failure or refusal to abide by the provisions of the standard agreement, or the provisions of any local union agreement; and a failure or refusal to abide by an oath taken at the time an individual becomes a member of the International Union or a local union. The "offense" listed on the respective charges is that Cutler and Congrove worked with a "composite crew" of ironworkers and elevator constructors in rigging and installing two escalators at the Morongo job site. It appears that this is alleged to be a violation of the standard agreement, specifically Article IV, Paragraphs 1 and 2 (p. 5), which deal with work jurisdiction. (Jt. Exh. 2 & 15)

On about April 10, the Respondent Local Union held a hearing on the intra-union charges filed against Cutler and Congrove. Jeff Gibas and Sam Goe, another Otis manager, were present at the local union hall with the intention of speaking on behalf of Cutler and Congrove at their hearings. However, John Holzer objected to the presence of Gibas and Goe, as they were not union members, and the Local Union Executive Board requested that they leave. Following the departure of Gibas and Goe, hearings were held for Cutler and Congrove, respectively. Holzer questioned each man about the events that occurred at the Morongo job site as it involved the work performed by the ironworkers on February 5 and 6. Recordings were apparently made of the hearings, which were then transcribed. The transcripts were admitted into evidence as joint exhibits, although the parties specifically declined to stipulate as to the accuracy of the transcripts. (Jt. Exh. 4 & 17) In any event, Cutler testified at the unfair labor practice proceeding that the transcript of his union hearing appeared generally accurate.

The executive board of the Respondent Local Union found Cutler and Congrove "guilty" of the charges brought against them.[10] Cutler was fined $ 2,000 per offense for a total of $ 4,000, with $1,000 due immediately and $ 3,000 to be held in abeyance for a period of five years and due and payable immediately upon conviction of any further offense against the Respondents. Congrove was fined $ 600 per offense for a total of $ 1,200, with all but $ 200 to be held in abeyance for a period to two years and due and payable immediately upon conviction of any further offense against the Respondents. (Jt. Exh. 5 &18) Thereafter, the Respondent Local Union directed Cutler and Congrove to be present at a membership meeting of the Local Union where they, and the assembled membership, would be advised of the decision of the executive board. A meeting of the membership was subsequently held on May 12, at which time the decisions on the charges against Cutler and Congrove were read to the membership. (Jt. Exh. 6, 19, & 30) It was the unrebutted testimony of John Holzer that it is the regular procedure of the Local Union, as provided for in its constitution and by-laws, to report the executive board's decision regarding the disciplining of union members at the next scheduled membership meeting. (Jt. Exh. 28, page 15-6) This apparently was the practice followed with the penalties issued to Cutler and Congrove.

On May 13, Cutler and Congrove each received a letter from a representative of the Local Union Executive Board informing them of the decision on the charges in their individual cases and advising each of them of their right to appeal the action of the Local Union to the executive board of the International Union. (Jt. Exh. 7 & 20) By letters dated June 4, Cutler and Congrove individually filed appeals with the International Union challenging the fines issued to them by the Local Union Executive Board. (Jt. Exh. 8 & 21) Following the International Union's receipt of Cutler's and Congrove's appeals, it directed the Local Union to furnish certain information concerning the underlying issues in dispute, the procedural history of the charges,

[10] Cutler and Congrove were each found guilty on "both charges" brought against them by Holzer. The specific charges brought by Holzer are set forth in detail above. (Jt. Exh. 5 & 18)

the decision by the local executive board, and a justification of that decision. The Local Union responded to the information request by letters dated July 21 and submitted certain documents to the International Union. (Jt. Exh. 10, 11, 23, & 24) By separate letters dated August 16, the International Union informed Cutler and Congrove that their individual appeals would be heard by the executive board of the International Union on November 8, in Waikoloa, Hawaii. (Jt. Exh. 12 & 25)

In individual letters dated January 10, 2005, the International Union informed the Local Union that the respective appeals by Cutler and Congrove had been denied by the International Union Executive Board.[11] Further, the letter referring to Cutler indicated that the penalty against him had been modified by raising the fine to be paid immediately from $ 1,000 to $ 2,000, with the remaining $ 2,000 to be held in abeyance for five years, provided that no additional violations occurred. The letter referring to Congrove indicated that the penalty against him had also been modified by raising the amount of the fine from $ 600 per offense to $ 2,000 per offense, for a total of $ 4,000, with $ 2,000 to be paid immediately and $ 2,000 to be held in abeyance for five years, provided that no additional violations occurred. Copies of these letters from the International Union were also sent to Cutler and Congrove, respectively. (Jt. Exh. 13, 14, & 26)

John Holzer testified that Cutler and Congrove could have further appealed their fines to the International Convention, which is held approximately every five years. The next convention is scheduled for September of 2006. In order for such an appeal to be timely, an aggrieved member must assert his appeal right within 60 days of an adverse decision from the International Union Executive Board. Neither Cutler nor Congrove has filed an appeal to the International Convention. Holzer testified that he knows of only two members who have ever filed an appeal to this level. Further, he indicated that Congrove has now paid his fine, but Cutler has not.

C. The Status of Scott Cutler

The parties strongly disagree as to the employment status of Scott Cutler at the time the work in question was performed at the Morongo project. It is the position of the General Counsel and the Employer that Cutler functioned, at least in part, as either a representative of the Employer for collective-bargaining purposes, and/or as its grievance adjuster. The Respondents dispute any such authority on the part of Cutler. This issue is critical in determining whether the Respondents' conduct in disciplining Cutler constituted a violation of Section 8(b)(1)(B) of the Act. Only if Cutler functioned in this capacity could his fine by the Respondents be construed to unlawfully restrain or coerce the Employer.

On the Morongo project, the Employer classified Cutler as the mechanic in charge. Cutler testified that in early February of 2004, at the time the escalators were installed, he was responsible for 7 to 10 crews of elevator constructors, with a total composition of 20 to 24 employees. According to Cutler, in his capacity as mechanic in charge, he assigned work to the other elevator constructors, authorized the performance of overtime work, as long as it was not "too much," and was "in charge of the payroll" on the project. The authorization of overtime for a week or two "would be no problem." However, if more overtime was needed, he would have to get authorization from his superior. Regarding payroll, Cutler carried a journal with him in which he recorded the hours worked by the men in the various crews. Later, if there was a problem,

[11] The International Union Executive Board is referred to by the Respondents as the General Executive Board.

dispute, or grievance concerning the hours worked by a member of one of his crews, Cutler was authorized to resolve it, adjusting the payroll records if necessary. In addition to payroll for the Employer's personnel, Cutler could authorize "cartage" reimbursement for employees who expended personal money on company related business.[12]

It appears that Cutler assigned work on a regular basis to the elevator mechanics, helpers, and temporary mechanics employed by Otis on the Morongo project. While the collective-bargaining agreement provides that a helper normally work under the direction of a mechanic,[13] Cutler was directly responsible for deciding what particular job tasks were performed by which specific mechanics and helpers. Further, there are apparently some jobs that helpers can perform without a mechanic in attendance, and Cutler was responsible for making such assignments as well.

According to Cutler, the standard agreement between the parties is fairly specific concerning the type of work that is within the jurisdiction of the Respondents, and must be performed by elevator constructors. However, he indicated there is some work that may not be as clearly defined in the contract. For example, he mentioned "prefabricated" sections of elevators or escalators, where a decision would need to be made whether the contract required that the section be disassembled and then reassembled by the elevator constructors. Cutler testified that as the mechanic in charge, he would make that determination himself, unless the matter involved was "something big," in which event he would need to consult with Gibas.

Cutler did not have the authority to formally discipline an employee. However, it appears that he could informally, orally reprimand an employee for poor work performance or other inappropriate conduct. Further, he testified that he could have an employee who was not performing properly removed from the job site and relocated. He would do so by requesting of his superior that the offending employee be removed. Similarly, if he needed additional employees to complete the project or there were too many employees on the job, he could request a personnel adjustment from his superior. Cutler believed that such a request by him would likely be accepted from upper management. At the time of the Morongo project, Cutler's immediate supervisor was Jeffrey Gibas, the Employer's construction and modernization superintendent.

Cutler currently is a member of the Local Union. He has been a member since 1981, except for a period in 2003, when he became a superintendent. At that time he voluntarily withdrew his union card. However, later that same year, 2003, his employment status changed to that of a mechanic in charge, and he had his union card reinstated. He has remained a union member ever since, including in his present position of assistant superintendent.

The parties stipulated that during the period Cutler served as a superintendent, prior to February of 2004, he was paid on a salary basis. However, when he worked on the Morongo project as a mechanic in charge, he was paid on an hourly basis. Mechanics, including mechanics in charge, helpers, and apprentices are all paid on an hourly basis. Their respective wage rates are set forth in the standard agreement. (Jt. Exh. 1)

[12] Cartage reimbursement as used by the Employer, would typically involve an employee driving a personal vehicle on company business, and subsequently being compensated for the expense.

[13] The term "mechanic" is understood in the trade to be a journeyman elevator constructor.

On cross-examination, Cutler acknowledged that as the mechanic in charge on the Morongo project, he was not on the Employer's collective-bargaining committee, had no formal role in the grievance and arbitration procedure under the terms of the standard agreement, and had no authority to settle grievances filed under that agreement. Still, there appears to be no doubt that Cutler could resolve informal "disputes," such as a complaint by a member of one of his crews that he had not been paid for all the time worked. As noted above, Cutler had the authority to resolve such an informal dispute directly with the employee, without the involvement of his superiors.

Jeffrey Gibas testified that as the mechanic in charge on the Morongo project, Cutler was responsible for the day to day operation of the project, including its manpower needs. According to Gibas, Cutler was authorized to assign work to the employees, to decide on the priority of the work, to determine whether overtime was need, and to assign it as necessary. Gibas spoke with Cutler an average of twice a week, and only came out to the job site about once a month. Gibas considered Cutler his "eyes on the job site." Just as Cutler had testified, Gibas indicated that payroll was a major responsibility, with Cutler having the authority to resolve disputes over hours of work directly with the involved employees.

During cross-examination, Gibas testified that the Respondents come to him to resolve formal grievances at the first step in the contract grievance and arbitration procedure. He acknowledged that Cutler had no involvement in the formal grievance procedure. While he indicated that Cutler could respond to "oral grievances," it appears that what he was referring to were informal, oral disputes, such as payroll discrepancies. In this respect, his testimony corroborated that of Cutler. Further, in support of Cutler, Gibas testified that Cutler was authorized to give employees verbal warnings for inappropriate conduct, but could not issue formal "performance letters" under the terms of the standard agreement. However, according to Gibas, he would accept a recommendation from Cutler that an employee be disciplined. Also, Gibas testified that Cutler could recommend that additional employees be hired for the project, or if there were an excess, that employees be removed from the job. He clearly left the impression that such a recommendation from Cutler was likely to be adopted.

John Holzer testified that the Employer's representative in the Los Angeles area with whom he would first raise grievances under the terms of the standard agreement was Jeffrey Gibas. He contends that this is what he did in February of 2004 regarding the issue of ironworkers allegedly performing the work of elevator constructors at the Morongo project. While he claims that the oral step in the formal grievance procedure occurred when he first raised this issue with Gibas, I found his testimony in this regard very confusing and somewhat contradictory. At first he testified that the oral step occurred on February 20, apparently corresponding to the grievance form notation on Joint Exhibit number 29, but then he said that the oral step occurred on March 22, apparently corresponding to the grievance form notation on Charging Party's Exhibit number 1. In any event, it was clearly his testimony that the formal grievance procedure was initiated by the Local Union at the oral step with the grievance being brought to the attention of Gibas, whenever that occurred.

In this regard, there is really very little difference in the testimony of Gibas and Holzer. Both men agree that the formal grievance procedure under the terms of the standard agreement is initiated at the oral step with a grievance being brought to Gibas' attention by a representative

of the Respondents.[14] However, this does not diminish the position of the General Counsel and the Employer that as the mechanic in charge on the Morongo project, Cutler had the authority to directly resolve certain informal disputes that arose with employees on the job site. The evidence in support of this contention remains unrebutted by the Respondents.

Section 2(11) of the Act defines a supervisor as "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." It is well established that possession of even one of these enumerated powers is sufficient to establish supervisory status. *NLRB v. Edward G. Budd Manufacturing Co.,* 169 F.2d 571, 576 (6th Cir. 1948), cert. denied 355 U.S. 908 (1949).

In this regard, it is clear that Cutler was a supervisor as defined in the Act when he served as the mechanic in charge on the Morongo project. The evidence is unrebutted that he exercised the authority to assign work to employees, to direct them in that work, to award overtime, and to adjust employee grievances. Such grievances included disputes as to wages earned and whether certain work was covered by the collective-bargaining agreement. Further, it is undisputed that Cutler also had the authority to effectively recommend to his superior, Jeffrey Gibas, the discipline of employees, as well as their transfer to a different project.

However, Cutler's supervisory status does not automatically mean that he functioned as a representative of Otis for the purposes of collective-bargaining or the adjustment of grievances under Section 8(b)(1)(B) of the Act. This issue will be addressed later in this decision.

D. The Fine Issued to Scott Congrove

The parties strongly disagree as to whether the discipline of Congrove constituted a violation of Section 8(b)(1)(A) of the Act. Preliminarily, it should be noted that it is the position of the Respondents that the fines issued to the elevator constructors who worked to raise the escalators on the Morongo project were specifically the result of the failure of those individuals to call the union hall and question the use of ironworkers on the project. Counsels for both Respondents argue throughout their respective post-hearing briefs that the fines issued to Congrove, Cutler, and the other constructors were for not contacting the Local Union when the constructors learned that a subcontractor crew of ironworkers was going to construct a gantry on the project. The Respondents contend that the constructors were not fined for actually working with the ironworkers. Local Union business agent Holzer testified at some length that union members are repeatedly instructed to call the union hall any time they have any question about whether a signatory contractor is violating the standard agreement. They are to be the "eyes and ears" of the Local Union and immediately report any potential violation of the contract. The Respondents vigorously argue that it was the failure of Congrove and Cutler to contact the

[14] The standard agreement, Article XV, Paragraph 2, indicates that the first step in the grievance/arbitration procedure is the "Oral Step." That provision reads in part, "Any employee, local union, or the Employer with a grievance…shall discuss the grievance with the designated Employer Representative….The Employer shall designate to each local union the Employer's Representative(s) for the purpose of responding to grievances at this step. If the grievance is initiated by an employee, the Local Business Representative shall be present during the discussion." The next step in the process is referred to as the "Written Step One." (Jt. Exh. 1)

Local Union with a complaint about ironworkers allegedly performing constructors work under the terms of the contract which was the reason for their fines. They deny that the fines were issued because the constructors followed the Employer's direction and worked with ironworkers.

The problem with the Respondents' argument is that it is not supported by the facts. As was set forth above, the fines issued by the Respondents generated a considerable amount of paperwork. Nowhere in those documents is there any mention of a failure by the constructors to "call the union hall." But, to the contrary, there are references to the constructors working with ironworkers. The charge that Holzer originally filed against Congrove specifically states that the "offense" he committed was "work[ing] with a composite crew of ironworkers & elevator const[ors] in rigging & install[ing] of 2 escalators at Morongo Casino." (Jt. Exh. 2) Further, at the time of the hearing before the Local Union Executive Board, Holzer's charges against Congrove were summarized in part as, "[w]orking with a composite crew of ironworkers, and allowing another trade to do our work." (Jt. Exh. 4 (trial summary), p. 5) Finally, an excerpt from the minutes of the Respondent International's Executive Board meeting lists the charges against Congrove as being "one of the crew working hoisting escalators, where ironworkers installed the gantry hoist." (Jt. Exh. 14 (minutes of general executive board), p. 2) Further, I credit the testimony of Scott Cutler that when Holzer first confronted him at the Morongo project about the hoisting of the escalators, Holzer mentioned his concerns about a "composite crew," and actually explained to Cutler what this term meant. Holzer does not dispute the substance of this conversation. Accordingly, I conclude that Congrove and Cutler were charged with and found guilty of working with ironworkers in raising the escalators, which work was allegedly exclusively constructors' work under the terms of the standard agreement. I specifically reject the Respondents' contention that the constructors were disciplined for not calling the union hall.

The complaint alleges that the Respondents' discipline of Congrove constituted a violation of Section 8(b)(1)(A) of the Act.[15] According to the statute, the unlawful restraint or coercion by the Unions must involve Congrove's exercise of his Section 7 rights. The Respondents' essentially contend that Congrove's conduct did not involve Section 7 activity. Congrove's conduct involved following his supervisor's direction in standing aside while the subcontractor's ironworker employees assembled and later disassembled the gantry. At first glance, it would seem that no Section 7 activity is involved. However, the Board and the courts have over time concluded that an employee performing his work duties on behalf of his employer is, in fact, engaged in Section 7 activity as that term is applied in Section 8(b)(1)(A).

In *Carpenters District Council of San Diego (Hopeman Bros.),* 272 NLRB 584 (1984), the Board adopted the findings of its administrative law judge that a non-supervisory leadman, who reported a fellow employee for a violation of the employer's code of conduct, and who was charged by his union with defaming a union brother and fined, was engaged in Section 7 activity. The judge acknowledged that the leadman was not engaged in Section 7 activity under a very strict reading of the statute, but concluded that "both the Board and the courts have given a broader scope to Section 8(b)(1)(A)." For that proposition, the judge cited *Communication*

[15] It should be noted, that in his post-hearing brief, Counsel for the General Counsel argues for the very first time that the fines issued to Scott Cutler also constitute a violation of Section 8(b)(1)(A). There is no such allegation in the complaint and the issue was neither raised nor litigated at the hearing. According, I will not address this issue in detail, as I do not believe the matter is properly before me. However, I would simply add that as I have concluded that Cutler was a supervisor as defined in the Act, any discipline issued against him by the Respondent Unions could not constitute restraint or coercion of an "employee" as specified in Section 8(b)(1)(A).

Workers Local 5795 (Western Electric Co.), 192 NLRB 556 (1971), and *Chemical Workers Local 604 (Essex International)*, 233 NLRB 1239 (1977) (Board adopted alj's decision finding union's fine and suspension of employee/member for performing his work duties directly affects his employment status and violates Section 8(b)(1)(A).)

As noted, in the *Carpenters District Council* case, the Board adopted the judge's decision finding that the union violated the Act by fining the leadman and by threatening to suspend him from membership because he performed his job duty and reported a fellow employee for breaching a company rule. Further, the judge concluded that the Supreme Court had established that under the proviso to Section 8(b)(1)(A) of the Act, a union's discipline of a member for engaging in Section 7 activity would not violate the Act only where the discipline is (1) geared to a legitimate union interest, (2) impairs no policy imbedded in the labor laws, and (3) is reasonably enforced against a union member who is free to leave the union. *NLRB v. Allis-Chalmers Mfg. Co.,* 388 U.S. 175 (1967); *Scofield v. NLRB,* 394 U.S. 423 (1969).[16] However, the judge in the *Carpenters District Council* case concluded, with the Board concurring, that the union rule in question was not geared to a legitimate union interest, as its application would result in the employee's dereliction of duty, and could lead to his discharge, which would obviously affect his employment relationship.

In a more recent case, the Board continued to find that an employee's conduct in following the requirements of his employment constituted Section 7 activity in the context of Section 8(b)(1)(A) of the Act. The Board affirmed an administrative law judge who found that a union's punishment of a non-supervisory leadman/union member for complying with his employer's instruction to report coworkers' misconduct constituted a violation of the Act. The Board specifically stated that the union's attempt to discipline the leadman for following his duty to report work infractions "affected his employment status." *General Teamsters Local No. 439 (University of the Pacific),* 324 NLRB 1096 (1997), enforced 175 F.3d 1173 (9th Cir. 1999). See also, *Communications Workers of America, Local 13000 (Verizon Communications, Inc.)*, 340 NLRB No. 2 (2003) (union violates 8(b)(1)(A) when it requires employee-members to refuse to work "mandatory" overtime).

Of particular significance was the judge's conclusion in the *Teamsters Local No. 439* case that the leadman fined by the union was engaged in traditional Section 7 activity when he made his decision to report a fellow employee for misconduct. The judge held that this involved the employee's decision to "refrain" from engaging in "concerted activity," which activity would have been acting in concert with other employees in objecting to the employer's outstanding orders by ignoring them. As Section 7 of the Act obviously gives employees both the right to engage in protected concerted activities and "the right to refrain from any or all such activities," it is, in my view, certainly logical that by refusing to join with other employees who wished to ignore the employer's outstanding orders, the leadman was refraining from such activities, consistent with Section 7. As noted, the Board affirmed the administrative law judge's decision.

There is no doubt that Congrove, who at the time was a temporary mechanic, was merely following the directions of his supervisor, Scott Cutler, when he "stood down" and observed the subcontractor's ironworker employees assemble and later disassemble the gantry. To have done otherwise would have constituted insubordination for which he could have been disciplined, perhaps even discharged. Apparently, the Respondents expected him to have

[16] The proviso reads as follows: "That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein."

protested the assignment of work to the ironworkers, refusing to participate in any further efforts to raise the escalators using the gantry belonging to Halbert Brothers. Despite the arguments of Counsels for the Respondents in their post-hearing briefs, I view this situation as what is commonly referred to as a "Hobson's Choice."[17] Congrove could either refuse the orders of his supervisor and risk discharge, or ignore the desires of his Local Union and face being fined or even expelled from the Local and International Union.

Following the precedent established by the Board, I conclude that Congrove was engaged in Section 7 activity when he decided to follow the direction of his supervisor and raise the escalators using the gantry assembled and later disassembled by the ironworkers employed by Halbert Brothers. To have done otherwise would have potentially subjected him to discipline affecting his employment status. Further, I believe that in not refusing to raise the escalators with the subcontractor's gantry, Congrove was exercising his Section 7 right to refrain from engaging in the concerted activity of objecting to the Employer's outstanding orders.

I am unpersuaded by the Respondents' argument that Congrove has remained with the Employer, currently as a mechanic in charge, without any disciplinary action taken against him by the Employer or threat of any such action. Certainly this does not alter the fact that the Respondents' conduct in fining Congrove restrained and coerced him in the exercise of his Section 7 rights, as the fine potentially affected his future employment relationship with Otis. The next time he is faced with such a "Hobson's Choice," Congrove may well side with the Local Union, endangering his continued employment with Otis.

Finally, the Respondents argue that the Employer was the force behind the filing of the appeals of the fines by Congrove and Cutler, and, of course, the Employer was also the Charging Party in this proceeding before the Agency. The Respondents take the position that for that reason the complaint should be dismissed. They argue that the Employer is trying to achieve an aim through the unfair labor practice proceeding that it failed to achieve at the bargaining table, namely a contractual right to subcontract the assembly and use of gantries in rigging and hoisting escalators. However, I find these arguments to be totally without merit. There is absolutely no reason for the undersigned to interpret the collective-bargaining agreement and determine whether the Employer's use of a subcontractor to perform this work was in breach of the contract or not. Such matters are not relevant to the issues before me. The Employer's "motives" in bringing these charges to the Board, or its assistance to Congrove and Cutler in appealing their fines, has no bearing on the question of whether the Act has been violated by the Unions' conduct. These are not private rights being vindicated by this proceeding, but, rather, public policy that is at stake. It simply does not matter whether Otis stands before the Agency with "clean hands" or not. What concerns the Agency is whether Congrove and Cutler had their rights under the Act violated by the Respondents' attempt to discipline them.[18]

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[17] The phrase "Hobson's Choice" refers to a choice between two undesirable options.

[18] Similarly, the argument of Counsel for the Local Union that Otis allegedly violated Section 8(a)(2) of the Act which, therefore, excuses the Respondents' conduct is devoid of any merit. So far as I am aware, no such charge was filed by the Respondents against the Employer, and there has certainly been no finding by the Board of any such violation. Further, for the reasons that I expressed above, any unfair labor practices committed by the Employer would be irrelevant to the issues before the undersigned.

Based on the above, I conclude that in the matter of Scott Congrove, the Respondents' conduct in fining[19] him constitutes a violation of Section 8(b)(1)(A) of the Act, as alleged in paragraphs 7(a), (b), (d), (e), and 10 (a) and (b) of the complaint.

E. The Fine Issued to Scott Cutler

The complaint alleges that Cutler was fined by the Respondent Unions in violation of Section 8(b)(1)(B) of the Act. As noted earlier, I have concluded that as the mechanic in charge on the Morongo project, Cutler was a supervisor as defined in Section 2(11) of the Act. However, in order to find that the Employer was unlawfully restrained or coerced by the Respondents' fines issued to Cutler, it must first be determined whether Cutler was the Employer's "representative for the purposes of collective-bargaining or the adjustment of grievance" as set forth in Section 8(b)(1)(B).

Simply exercising some supervisory authority is not sufficient to find that an individual is a collective-bargaining representative or grievance adjuster. The Supreme Court has held that in order to establish a violation of Section 8(b)(1)(B), it must be shown that the individual involved had the actual authority to engage in grievance adjustment or collective-bargaining activities on behalf of the Employer. *NLRB v. Electrical Workers Local 340,* 481 U.S. 573 (1987) ("*IBEW Local 340*"). Prior to the *IBEW Local 340* case, the Board had taken the position that Section 8(b)(1)(B) should be broadly construed to cover any Section 2(11) supervisor, because in the future such a supervisor could become engaged in collective-bargaining or grievance adjustment. This theory was referred to as the "reservoir doctrine," as it created a pool or reservoir of potential authority to cover any Section 2(11) supervisor. In the *IBEW Local 340* case, the Court made it clear that Section 8(b)(1)(B) prohibits union discipline of only those supervisors who actually perform Section 8(b)(1)(B) duties. *Id* at 586.

I believe that the record is clear that Cutler did, in fact, actually perform Section 8(b)(1)(B) duties during the period of time that he was the mechanic in charge on the Morongo project. He was the only supervisor present on the job site on a daily basis, responsible for up to 24 Otis employees. He was often a grievance adjuster. Frequently, those grievances involved payment issues, with employees disputing the amount they were paid. Cutler was required to listen to the complaint, investigate its validity, review payroll records, and resolve the dispute, informing the involved employee as necessary. These grievances were oral, and "informal" in the sense that they were not steps in the grievance and arbitration procedure as set out in the standard agreement. Never the less, they were important to both the employees, and presumably their union, and to the Employer. Further, if such disputes could not be resolved in an informal way, they might very well become formally filed grievances under the terms of the contract.

Also, Cutler sometimes handled complaints registered directly by the Local Union. It is highly significant to recall that local union business agent Holzer first brought his concerns about the gantry assembly to Cutler. It was during this discussion with Cutler that he expressed his

[19] In his post-hearing brief, counsel for the Employer contends that the Respondents also unlawfully punished Congrove by extending the term of his union "probationary period." The complaint does not allege any such conduct by the Respondents, and I could find no reference to an extension of his probationary period in any of the documents in evidence related to Congrove's discipline. Further, so far as I can determine, the issue was not raised nor litigated at the hearing. Accordingly, this allegation is not properly before me, and I make no finding regarding it.

complaint about the Otis constructors allegedly working in a "composite crew" with ironworkers in violation of the standard agreement. This conversation may not have constituted a formal grievance under the terms of the contract, but the substance of the dispute was obviously of great concern to the Respondents, and resulted in the filing of a formal grievance and the issuance of intra-union fines. The Respondents make much of the fact that under the terms of the standard agreement, the first step in the grievance procedure is an oral complaint made not to Cutler, but to his superior, superintendent Gibas. Still, that does not detract from the fact that Cutler was the Employer's representative on the job site, and the person with whom Holzer decided to first raise his complaint about the gantry assembly. It is worth considering that had Cutler and Holzer been able to resolve their dispute in this first conversation, the matter would have ended at that point, making unnecessary all the subsequent actions by the Unions and their ramifications.

As part of the process of adjusting grievances, Cutler was involved on a regular basis in contract interpretation. Both Cutler and Holzer testified about disputes that frequently arose regarding the use of prefabricated materials. The standard agreement provides a detailed explanation of what specific work an employer is permitted to have prefabricated and what work must be done on a job site by the elevator constructors. Never the less, disputes are apparently very common. It was the daily responsibility of Cutler on the Morongo project to determine under the terms of the contract what work could be prefabricated, and to resolve any dispute with the Respondents. While Cutler indicated that he would have to consult with Gibas on significant prefabrication issues, he testified that, as the mechanic in charge on the site, he was able to directly resolve such matters with the Local Union when the dispute involved less significant prefabrication issues. It is undisputed that during the specific conversation with Holzer where the gantry assembly was discussed, Holzer also complained to Cutler about prefabrication work on the escalators allegedly in violation of the contract.

It is significant to note that Cutler was involved in contract interpretation over the very issue that ultimate led to the decision to use a subcontractor to assemble the gantry. Both Cutler and Gibas testified that they discussed the need for a gantry to raise the escalators, and although Gibas made the ultimate decision to use an outside subcontractor, he considered Cutler's opinion.[20]

Following the Supreme Court's holding in *IBEW Local 340, supra,* various decisions by the Board fully support the position that Cutler, as the mechanic in charge on the Morongo project, performed Section 8(b)(1)(B) duties. In *Sheet Metal Workers International Association, Local 68 (The DeMoss Co.)*, 298 NLRB 1000,1003 (1990), the Board concluded that adjusting grievances at a low level, before they become formalized in the grievance arbitration procedure, conforms to the grievance adjustment requirements in Section 8(b)(1)(B). According to the Board, one of the purposes of that Section of the Act is to protect the employer's interest in having an individual of its own choosing to represent it in dealings with the union that represents its employees. *Id*.

Significantly, in a number of cases, the Board has found elevator constructor mechanics in charge, who possess many of the same duties and responsibilities as Cutler, to be Section

[20] Of course, the underlying dispute between the Unions and the Employer involves the issue of whether Otis violated the standard agreement in using the employees of a subcontractor to construct a gantry on the project. However, as I have indicated, I believe that the resolution of that dispute between the parties is irrelevant to the consideration of the unfair labor practice charges before me.

8(b)(1)(B) supervisors. In *Local One, International Union of Elevator Constructors of New York and New Jersey (National Elevator Industry, Inc.)*, 339 NLRB 977 (2003), the mechanic in charge was the only employee available daily to resolve employee disputes and problems, including payroll disputes, job assignments, and overtime assignments. The Board concluded that the fines issued to this individual violated Section 8(b)(1)(B) as they would likely have an inhibiting effect on his future conduct as a supervisor, company representative, and grievance adjuster. Similarly, in *Local 36, International Union of Elevator Constructors (Montgomery Elevator Company),* 305 NLRB 53 (1991), the Board held that a mechanic in charge was fined by his union because of the way he interpreted the contract regarding the use of a crane. According to the Board, the imposition of the fine would potentially have an adverse effect upon his future performance as a management representative and grievance adjuster. He was the only supervisor on site to resolve issues of contract interpretation, such as work assignments and conflicts involving pay, and interpersonal disputes. In finding a violation of Section 8(b)(1)(B), the Board was not dissuaded by the individuals lack of participation in the collective-bargaining process or the formal contract grievance procedure.

While the Respondents argue that the authority Cutler had to resolve wage disputes was merely "ministerial," the Board has repeatedly found a mechanic in charge's ability to deal with compensation issues to be grievance adjustment, since compensation is a critical term and condition of employment. *Local No. 10, International Union of Elevator Constructors (Thyssen General Elevator Co.),* 338 NLRB 701, 702 (2002) (denial of wage claim constitutes grievance adjustment within the meaning of Section 8(b)(1)(B); *Local 36, International Union of Elevator Constructors, supra,* at 56 (resolving pay grievances confers Section 8(b)(1)(B) status).

In his post-hearing brief, counsel for the Respondent International Union agues that in order for there to be a violation of Section 8(b)(1)(B), Cutler must have been directly engaged in grievance adjustment or contract interpretation during the incident that led to his being fined by the Respondents. In support of this proposition, he cites *Sheet Metal Workers Local 33 (Cabell Sheet Metal & Roofing),* 316 NLRB 504, n.1 (1995). While it appears that this case is correctly cited for the proposition alleged, other, more recent Board cases, as cited above, do not seem to have this requirement. In any event, I am of the view that Cutler was disciplined precisely because he interpreted the contract to permit the Employer to have the gantry constructed by a subcontractor employing employees other than elevator constructors. Therefore, he was directly engaged in contract interpretation during the very incident that led to his being disciplined.

Based on the above, I conclude that the fines imposed on Scott Cutler by the Respondent Unions potentially had an adverse impact upon his future performance as a management representative and grievance adjuster. As such, the Unions restrained and coerced Otis in the selection of its grievance adjustment representative. Accordingly, I find that the Respondent Unions violated Section 8(b)(1)(B) of the Act, as alleged in paragraphs 9(a), (b), (d), (e), and (11)(a), and (b) of the complaint.

F. The Respondents' Motions

As I noted above, at the commencement of the hearing in this case, the Respondents filed a series of motions seeking the dismissal of the unfair labor practice charges alleged in the complaint, or, in the alternative, a deferral of these charges to the contract grievance arbitration procedure and/or to the internal union appeal process available to union members who have been disciplined. I reserved ruling on these motions to give the parties the opportunity to fully address the issues in their post-hearing briefs. I will now rule on the outstanding motions.

The Respondent International Union seeks a dismissal of the complaint, as allegedly it fails to state a *prima facie* case under either Section 8(b)(1)(A) or Section 8(b)(1)(B) of the Act. The Respondent Local Union seeks a similar dismissal of that portion of the complaint that alleges a violation of Section 8(b)(1)(A). Counsel for the General Counsel and counsel for the Employer oppose said motions. As is reflected above, I have found the Respondents to have violated both Sections 8(b)(1)(A) and 8(b)(1)(B) of the Act. Concomitant with such a finding, I hereby deny the Respondents' motions to dismiss for a failure to state a *prima facie* case.

The Respondent Local Union seeks a dismissal of the entire complaint "by reason of the bar of the statute of limitations under NLRA Section 10(b)." Section 10(b) of the Act states in part, "[t]hat no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and service of a copy thereof upon the person against whom such charge is made…." Counsel for the Local Union contends that the original charge, which was filed on April 6, 2005, was untimely as the complaint alleges the Local Union fined Cutler and Congrove on about May 12, 2004, nearly a year before the charge was filed. May 12 was the date on which the Local Union Executive Board's decision finding Cutler and Congrove guilty and fining them was announced to the union membership. It is the position of counsel for the Local Union that following that event, no actions were taken by the Respondent Local Union which could be deemed unfair labor practices. Implicit in this argument is the contention that the Local Union was not responsible for any subsequent actions taken by the Respondent International Union pursuant to Cutler's and Congrove's appeals, and that at that point "the matter was out of their [the Local Union's] hands." Both the General Counsel and the Charging Party oppose this motion, with the Respondent International Union not addressing the issue.

The argument of counsel for the Local Union is contrary to Board authority. "The Board has traditionally held that 'a charge concerning union discipline is not time-barred until 6 months after the imposition of the discipline becomes final, regardless of when the disciplinary proceeding may have been instituted.'" *Sheet Metal Workers' International Association (Owl Constructors),* 290 NLRB 381, 383 (1988). In that case, the Board concluded that the statute of limitations on a Section 8(b)(1)(A) unlawful fines claim did not begin until after the international union affirmed the imposition of the fines by the local union. *Id* at 384. In the matter at hand, the facts are very similar.

Following the issuance of their fines by the Local Union, Cutler and Congrove appealed those fines to the Respondent International Union in accordance with the Constitution and By-Laws of both Unions. (Jt. Exh. 27, Art. XVIII, Sec. 11, p. 64, and Jt. Exh. 28, Art.15, Sec. 10, p.15-10) The International Union denied the appeals, increased the fines, and reported its decisions to the Local Union by letters dated January 10, 2005, with respective copies to Cutler and Congrove. (Jt. Exh. 13 & 26) In my view, it is clear that the Respondents were acting in concert regarding the discipline issued to Cutler and Congrove. Their actions were not individual and distinct, as if in a vacuum. The fines that were issued by the Local Union were upheld and increased by the International Union. As such, the last action which constituted an unfair labor practice was the Respondent International Union's notification to the Respondent Local Union, with copies to Cutler and Congrove, of its denial of the appeals and increase in the fines. Accordingly, the statute of limitations in Section 10(b) of the Act did not begin to run until January 10, 2005, with respect to the charges against both Respondents. *Sheet Metal Workers Local 75, supra; Sheet Metal Workers Local 33 (Cabell Sheet Metal), 316 NLRB 504, n.1 (1995); Local 714, International Union of Operating Engineers (Contractors Foundation Drilling Co.)*, 262 NLRB 1161,1164 (1982); *Local 716, International Brotherhood of Electrical Workers (Fiske Electric Co.),* 203 NLRB 333, 336 (1973); *Local 9511, Communications Workers of America (Pacific Telephone and Telegraph Co.),* 188 NLRB 433, 435 (1971).

As the Respondents continued to commit unfair labor practices against Cutler and Congrove through January 10, 2005, the subsequent unfair labor practice charges, as alleged in the complaint, were all timely filed within the period specified in Section 10(b) of the Act.[21] Accordingly, I hereby deny the Respondent Local Union's motion to dismiss the complaint on the basis that the charges were untimely filed.

Both Respondents move for a deferral of these proceedings to the internal union discipline procedure, which they allege has yet to be fully exhausted by Cutler and Congrove. Further, the Respondents indicate a willingness to waive any time limits for the filing of an appeal in order to exhaust the internal union discipline procedure. Counsel for the General Counsel and counsel for the Charging Party oppose any such deferral.

Following the adverse decision on the appeals by the International Union General Executive Board, there remains one more step in the appeal procedure, namely an appeal to the International Union Convention. (Jt. Exh. 27, International Union Constitution and By-Laws, Art. XVIII, Sec. 10 & 13.) Local Union business agent Holzer testified that the International Union Convention is held approximately every five years, with the next one scheduled for September of 2006. Interestingly, he testified that he knows of only two members who have ever filed appeals of union discipline to the level of the international convention.

Counsel for the Local Union contends, in essence, that it is inconsistent of the General Counsel to take the position that Section 10(b) of the Act does not begin to run until the last action on the appeals by the International Union, while at the same time refusing to defer these proceedings to the last step in the internal union discipline-appeal process. Counsel cites to *Collyer Insulated Wire,* 192 NLRB 837 (1971); and *United Technologies Corp.*, 268 NLRB 557 (1984), for the proposition that "the Board will normally defer to pending grievance/arbitration procedures, under collective-bargaining agreements." While acknowledging that "there is admittedly scant precedent of deferral in internal union proceedings," counsel draws an analogy for such a deferral to the Board's policy under *Collyer* and *United Technologies*.[22]

To begin with, I see no inconsistency in the General Counsel's position. The statute "is what it is," meaning that Section 10(b) of the Act establishes a statute of limitations for unfair labor practices. The General Counsel is not at liberty to pick and choose how to apply the statute. I have already concluded that the General Counsel's interpretation of Section 10(b) has been correctly applied; and the unfair labor practice charges in this case were timely filed, based on the last action by the International Union Executive Board in denying the appeals and increasing the fines. This does not establish that, therefore, the General Counsel must defer these charges to the final step in the internal union discipline-appeal process. Any deferral by the Board must stand on its own merits, which merits I find sorely lacking in this instance.

In *Collyer* and *United Technologies*, the Board established a standard for deferring to neutral arbitration proceedings. I see no evidence that this internal union discipline-appeal process is at all neutral. As noted earlier, at the original Local Union Executive Board hearing on the charges filed against them, Cutler and Congrove were not permitted to call witnesses,

[21] The last charges filed, as alleged in the complaint, were amended charges filed and served on the Respondents on June 29, 2005. This date is less than six months following the commission of the last unfair labor practice by the Respondents on January 10, 2005.

[22] Counsel for the International Union adopts and incorporates counsel for the Local Union's arguments on this issue.

apparently because those witnesses were not union members. Further, they had no real opportunity to appear and testify in their own defense at the International Union Executive Board hearing, which was held in the State of Hawaii.[23] While there is no verbatim record of the "hearing" held on the appeal of the fines by the International Union Executive Board, the undersigned certainly questions the impartiality and fairness of a process which resulted not only in a denial of Cutler's and Congrove's appeals, but significantly increased the discipline each man received.

The very idea behind deferral is to afford the parties to a dispute before the Board an opportunity to put into practice a mechanism that they have previously agreed upon for a disinterested third party to resolve that dispute. The Respondents' internal union discipline-appeal process is ill-suited for such deferral. Certainly the Employer is not a party to such a process, especially where its managers attempted to testify on behalf of Cutler and Congrove, but were prevented from doing so by officials of the Respondent Local Union. Further, I see nothing about the process which would indicate that at any stage there exists a "disinterested third party" who has the authority to rule in favor of the appellants. To the contrary, as it was the agents of the Respondents who both charged Cutler and Congrove with offenses and who sat in judgment of them, they can certainly not be considered unbiased.

I believe that it would be totally inappropriate for the Board to abdicate its authority and defer this matter to the last step in a process which I consider to be fundamentally unfair. This is especially true where this final step is to an International Union Convention held only once every five years, and where apparently it is at best rare for appeals by members to be heard. Accordingly, I hereby deny the Respondents' motion to defer this proceeding to the internal union discipline-appeal process.

Finally, the Respondents move for deferral of this proceeding to the grievance-arbitration procedure in the standard agreement. They ask essentially that the resolution of the previously filed grievance regarding the issue of the gantry assembly by employees other than elevator constructors be held as conclusive of the issues before the Board.[24] Counsel for the General Counsel and counsel for the Charging Party oppose these motions.

The Board will defer to an arbitrator's decision where the proceedings meet the following test: (1) the proceedings are fair and regular; (2) all parties agree to be bound; (3) the contractual and unfair labor practice issues are factually parallel; (4) the arbitrator was presented generally with facts relevant to resolving the unfair labor practice allegation: and (5) the decision is not clearly repugnant to the purpose and policies of the Act. *Spielberg Manufacturing Co.,* 112 NLRB 1080 (1955); *Olin Corp.,* 268 NLRB 573 (1984). Further, the Board has deferred to grievance adjustments and grievance settlements short of arbitration. *Griffith-Hope Co.,* 275 NLRB 487, 488 (1985); *Alpha Beta Co.,* 273 NLRB 1546, 1547(1985).

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[23] In all likelihood, the cost of travel to Hawaii for Cutler and Congrove would have been prohibitive.

[24] Counsel for the Respondent International Union asks that the Board "defer to the grievance resolution and find that the fines (and the affirmance of the fines) were not unlawful because the discipline was for the failure to abide by the Otis Agreement." However, counsel for the Respondent Local Union seeks a somewhat less encompassing finding, acknowledging that "the grievance does not resolve the entire charge," and asking only that through the grievance resolution it "be considered conclusively established that the activity in question was, in fact, a violation of the collective bargaining agreement."

However, in my view, this matter is totally inappropriate for any type of deferral, full or partial, to the grievance settlement entered into between the Employer and the Respondents. Preliminarily, it is entirely irrelevant to this case whether Otis violated the standard agreement or not. For a resolution of the issues before the undersigned, it is not necessary to determine whether Otis or the Respondent Unions were correct in their respective interpretations of the contract. Assuming, for the sake of argument, that the Respondents' interpretation of the contract was correct, such a finding would in no way serve to exculpate the Respondents for having fined Congrove and Cutler. Congrove was fined because he followed his supervisor's direction, and Cutler was fined for making a determination as the Employer's grievance adjuster that the gantry could be assembled by employees other than elevator constructors and/or for carrying out that determination. While the underlying interpretation of the contract by the Employer may have been incorrect, the Respondents' actions in fining Congrove were still a violation of Section 8(b)(1)(A) and in fining Cutler still a violation of Section 8(b)(1)(B). The fines serve to unlawfully restrain and coerce the Employer and employees regarding this work dispute and potentially others in the future, regardless of whether Otis violated the contract or not.[25] It is for those reasons that the Act has been violated by the actions of the Respondents.

There are a number of additional reasons why the Board should not defer this matter to the grievance settlement reached between Otis and the Respondents. It was Congrove and Cutler who were fined. They certainly did not agree to be bound by the grievance settlement, even if the parties to the standard agreement did. The unfair labor practices arise from the Respondents' processing of intra-union charges against Congrove and Cutler for allegedly violating the Respondents' Constitution and By-Laws, while the grievance under the contract involved the Employer and the Unions, totally different parties. Even more significant, the unfair labor practice issues were not considered by the Employer and the Respondents in resolving the grievance. The contract violations alleged by the Respondents in the grievance do not even remotely parallel the unfair labor practice issues in the case before the undersigned.

Accordingly, I conclude that it would be inappropriate to defer any of the unfair labor practice issues before me to the grievance-arbitration procedure in the standard agreement, or to the resolution of the specific grievance filed by the Unions and settled by the parties. I hereby deny the Respondents' motion to so defer.

Conclusions of Law

1. The Employer, Otis Elevator Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The International Union of Elevator Constructors (the Respondent International Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. The International Union of Elevator Constructors, Local 18 (the Respondent Local Union) is a labor organization within the meaning of Section 2(5) of the Act.

[25] It is at least worth noting that Otis continues to take the position that its actions did not constitute a violation of the standard agreement. The Employer's senior labor relations manager, Jeffrey Ricapito, testified that Otis settled the grievance merely because it was not worth further efforts to contest the issue. However, he strongly denies that the settlement of this particular grievance by the Employer serves as binding precedent in any similar future dispute.

4. By the following acts and conduct the Respondent Local Union has violated Section 8(b)(1)(A) of the Act:

(a) Fining Scott Congrove because he followed the directions of the Employer in performing his work duties in a manner the Respondent Local Union asserted violated the collective-bargaining agreement between the Respondents and the Employer.

5. By the following acts and conduct the Respondent International Union has violated Section 8(b)(1)(A) of the Act:

(a) Denying Scott Congrove's appeal of his fine and increasing the amount of the fine imposed on him, because he followed the directions of the Employer in performing his work duties in a manner the Respondent International Union asserted violated the collective-bargaining agreement between the Respondents and the Employer.

6. By the following acts and conduct the Respondent Local Union has violated Section 8(b)(1)(B) of the Act:

(a) Fining Scott Cutler because he performed his duties on behalf of the Employer by interpreting the collective-bargaining agreement between the Respondents and the Employer in a manner inconsistent with the Respondent Local Union's interpretation of the agreement.

7. By the following acts and conduct the Respondent International Union has violated Section 8(b)(1)(B) of the Act:

(a) Denying Scott Cutler's appeal of his fine and increasing the amount of the fine imposed on him, because he performed his duties on behalf of the Employer by interpreting the collective-bargaining agreement between the Respondents and the Employer in a manner inconsistent with the Respondent International Union's interpretation of the agreement.

8. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondents engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act, including the posting of appropriate remedial notices.

The Respondents having unlawfully fined Scott Cutler and Scott Congrove, I recommend that they be ordered to rescind those fines. Further, I shall recommend that the Respondents be ordered to return to Cutler and Congrove any monies paid by either of them pursuant to the fines levied by the Respondents. The Respondents shall also reimburse Cutler and Congrove for any costs incurred by either of them in defending themselves at the internal union hearings. Interest shall be paid on these monies as computed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

It is further recommended that the Respondents remove from their records all references to the unlawful discipline of Cutler and Congrove, and to notify them in writing that this has been done.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[26]

Order

The International Union of Elevator Constructors (the Respondent International Union), and the International Union of Elevator Constructors, Local 18 (the Respondent Local Union), and collectively the Respondents, their officers, agents, and representatives, shall

1. Cease and desist from:

(a) Filing internal-union charges against, fining, or otherwise disciplining union members, because of actions taken by them as employees in following the direction of their employer in the performance of their job duties;

(b) Filing internal-union charges against, fining, or otherwise disciplining union members, because of actions taken by them as employees in the performance of their job duties as collective-bargaining representatives or grievance adjusters on behalf of Otis Elevator Company, or other employers; and

(c) In any like or related manner, restraining or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act; or by restraining or coercing an employer in the selection of its representatives for the purposes of collective-bargaining or the adjustment of grievances.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Dismiss the internal-union charges filed and rescind the fines levied against Scott Congrove and Scott Cutler, refund any monies they may have paid on account of the fines assessed against them and costs incurred by them in defending themselves at the internal-union hearings, plus interest;

(b) Within 14 days from the date of the Board's Order, remove all records of the internal-union charges, resulting proceedings, and fines from their files, and notify Scott Congrove and Scott Cutler in writing that these actions have been taken and that the charges, resulting proceedings, and fines will not be used against them in any way;

(c) Within 14 days after service by the Region, post at each of the Respondents' business offices and meeting/hiring halls located throughout the Unites States and its territories copies of the attached notice marked "Appendix."[27] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in

[26] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[27] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

conspicuous places including all places where notices to members are customarily posted.[28] Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material;

(d) Within 14 days after service by the Region, the Respondents shall duplicate and mail, at their own expense, a signed copy of the notice to all their members who were employed by Otis Elevator Company at the Morongo Casino jobsite, in Cabazon, California, at any time on or after February 5, 2004;[29]

(e) Sign and return to the Regional Director sufficient copies of the notice for posting by Otis Elevator Company, if willing, at all places where notices to employees are customarily posted; and

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that each of the Respondents have taken to comply.

Dated at Washington, D.C. January 25, 2006

Gregory Z. Meyerson
Administrative Law Judge

[28] Authorized representatives of both the Respondent International Union and the Respondent Local Union shall sign the notices to be posted at those business offices and meeting/hiring halls operated by, or under the authority of, either of the Respondents throughout the United States and its territories, as specified above.

[29] Notice mailing has been found appropriate where a project on a particular job site has been completed. *Holder Construction Co.*, 327 NLRB 326 n.4 (1998).

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union.
Choose representatives to bargain on your behalf with your employer.
Act together with other employees for your benefit and protection.
Choose not to engage in any of these protected activities.

WE WILL NOT do anything that restrains or coerces you in the exercise of these rights. Specifically:

WE WILL NOT file internal-union charges against, fine, or otherwise discipline our union members, because of actions taken by them as employees in following the direction of their employer in the performance of their job duties.

WE WILL NOT file internal-union charges against, fine, or otherwise discipline our union members, because of actions taken by them as employees in the performance of their job duties as collective-bargaining representatives or grievance adjusters on behalf of Otis Elevator Company, or other employers.

WE WILL NOT restrain or coerce Otis Elevator Company, or other employers, in the selection and retention of their collective-bargaining representatives or grievance adjusters.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed to you by Federal labor law.

WE WILL dismiss the internal-union charges filed and rescind the fines levied against Scott Cutler and Scott Congrove, refund any monies they may have paid on account of the fines assessed against them and costs incurred by them in defending themselves at the internal-union hearings, plus interest.

WE WILL remove all records of the internal-union charges, resulting proceedings, and fines from our files, and notify Scott Cutler and Scott Congrove in writing that these actions have been taken and that the internal-union charges, resulting proceedings, and fines will not be used against them in any way.

International Union of Elevator Constructors

(Labor Organization)

Dated _____ By _____

(Representative) (Title)

International Union of Elevator Constructors, Local 18

(Labor Organization)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

888 South Figueroa Street, 9th Floor

Los Angeles, California 90017-5449

Hours: 8:30 a.m. to 5 p.m.

213-894-5200.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 213-894-5229.